

These are the tentative rulings for civil law and motion matters set for Thursday, November 14, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 13, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0059572 JMAG Enterprises, LLC vs. Pinney, Dianne

The appearance of the parties is required at the hearing on the Order to Show Cause regarding the Motion to Quash.

2. S-CV-0030126 Cappawana, George, et al vs. Centex Real Estate Corp., et al

Cross-Defendant Sacramento A-1 Door's Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-defendant's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

Centex's Motion to Consolidate and Cross-Defendant J.R. Pierce's Joinder to Motion

The motion is granted. Cappanawa v. Centex, Placer Court Case No. SCV-30126, is consolidated with Mazzoni v. Centex, Placer Court Case No. SCV-31148. The court notes that the filings in both cases are substantial. The Mazzoni file now spans 22 volumes while the Cappawana file spans 8 volumes. The clerk shall retain all documents filed prior to the consolidation in their original files. Mazzoni v. Centex, SCV-31148, shall be designated as the lead case. All future filings shall be in the Mazzoni file, SCV-31148, using the SCV-31148 case number. The December 2, 2013 trial dates are

vacated. The matter is set for a case management conference on December 3, 2013 at 10:00 a.m. in Department 40 to discuss re-setting of trial dates.

The severed matter in SCV-31148 involving Centex and St. Paul shall remain severed from the remainder of the action. The June 16, 2014 trial date on this severed matter remains as previously set.

3. S-CV-0031148 Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al

Defendant/Cross-Complainant Centex's Motion for Summary Adjudication and Cross-Defendant St. Paul and Fire Insurance Company's Motion for Summary Adjudication

It is noted that upon review, portions of St. Paul's opposition to Centex's motion are missing from the court's file. In light of this incomplete documentation, the court requests a courtesy of the following endorsed filed documents from St. Paul:

St. Paul's Opposition to Centex's Amended Motion for Summary Adjudication
Separate Statement of Undisputed Material Facts
St. Paul's Evidentiary Objections to Centex's Motion
Declaration of Richard Carrillo in Support of Opposition

Both motions are continued, on the court's own motion, to November 21, 2013 at 8:30 a.m. in Department 40. The court thanks the parties for their cooperation and apologizes for the inconvenience.

Cross-Defendant Sacramento A-1 Door's Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Centex's Motion to Consolidate and Cross-Defendant J.R. Pierce's Joinder to Motion

As an initial matter, the court notes that it inadvertently stated in its October 31, 2013 minutes that cross-defendant Aspen Insurance Company filed a joinder to the current motion. This was an error as the cross-defendant had actually joined a separate and unrelated motion.

The motion is granted. Cappanawa v. Centex, Placer Court Case No. SCV-30126, is consolidated with Mazzoni v. Centex, Placer Court Case No. SCV-31148. The court notes that the filings in both cases are substantial. The Mazzoni file now spans 22 volumes while the Cappawana file spans 8 volumes. The clerk shall retain all documents filed prior to the consolidation in their original files. Mazzoni v. Centex, SCV-31148, shall be designated as the lead case. All future filings shall be in the Mazzoni file, SCV-31148, using the SCV-31148 case number. The December 2, 2013 trial dates are

vacated. The matter is set for a case management conference on December 3, 2013 at 10:00 a.m. in Department 40 to discuss re-setting of trial dates.

The severed matter in SCV-31148 involving Centex and St. Paul shall remain severed from the remainder of the action. The June 16, 2014 trial date on this severed matter remains as previously set.

4. S-CV-0032558 J.Corda Construction, Inc. vs. Grauman, Kevin, et al

Plaintiff's unopposed Motion for Order Compelling Attendance and Testimony at Deposition and Sanctions is granted. Defendant Kevin Grauman and Deborah Grauman shall appear for their depositions at a date, time, and location to be noticed by plaintiff. Plaintiff is also awarded sanctions in the amount of \$2,517.50. (CCP§2025.450(g)(1).)

Plaintiff's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

5. S-CV-0032610 Pecson, Zenaida vs. JPMorgan Chase Bank, NA. et al

Plaintiff's Motion for Reconsideration is continued to November 21, 2013 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

The court notes that a Case Management Conference is currently set for November 19, 2013 at 10:00 a.m. in Department 40.

6. S-CV-0032664 State Farm General Insurance vs. WTF Plumbing, Inc., et al

Defendant Zone 4344 Properties, LLC's Demurrer to the First Amended Complaint (FAC) is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the FAC establishes that the first cause of action for breach of contract, second cause of action for fraudulent misrepresentation, and third cause of action for negligence are sufficiently pled and withstand demurrer.

Defendant shall file and serve its answer or general denial on or before December 6, 2013.

Plaintiff's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

7. S-CV-0033488 Gill, Pamela vs. Sierra Joint Comm. College District, et al

Plaintiff's Application for Order Relieving Plaintiff of Obligation to Timely Present Claim is denied. A party may seek relief from the denial of an application for leave to present a claim under Govt C§946.6. In order for the court to grant such relief, the court must be able to find that (1) the application was made within a reasonable time not to exceed the dates specified in Govt C§911.4 and (2) the moving party's failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect. (Govt C§946.6.) The court has carefully considered the moving papers, opposing papers, and supplemental briefing submitted by the parties. Plaintiff has failed to sufficiently establish that her failure to present the claim to defendant was through mistake, inadvertence, surprise or excusable neglect.

8. S-CV-0033534 Centex Homes, et al vs. Ad Land Corp.

The demurrer is dropped from the calendar as no moving papers were filed with the court.

9. S-CV-0033538 Bowen, Bethany vs. Dodson, Benjamin C. R., et al

Defendant's Motion to Strike is dropped from the calendar at the request of the moving party.

10. S-CV-0033594 Turtletaub, Paula vs. Evergreen Advantage, LLC, et al

Defendant's Demurrer is dropped from the calendar. Plaintiff filed a first amended complaint on October 30, 2013.

11. S-CV-0033648 Mentesh, William, et al vs. Nizuk, Joey, et al

Defendants' Demurrer is sustained, in part, with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

As an initial matter, the court notes that plaintiffs have agreed to amend their second cause of action for constructive fraud. In light of this, the demurrer to the second cause of action is sustained with leave to amend.

The fifth cause of action for misappropriation of trade secrets is pled in a vague and conclusory fashion without sufficient factual allegations to identify the trade secrets that have been misappropriated. (CCP§2019.210; *Perlan Therapeutics, Inc. v. Superior*

Court (2009) 178 Cal.App.4th 1333, 1350.) The fifth cause of action fails to withstand demurrer.

The sixth cause of action alleges violations under the UCL. As currently pled, the UCL claim is reliant upon the misappropriation of trade secrets. “The UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. ...By proscribing ‘any unlawful business practice,’ section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as ‘unfair’ or ‘deceptive’ even if not ‘unlawful’ and vice versa.” [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) This cause of action is insufficiently pled since it is based upon the fifth cause of action, which fails.

An action for intentional interference of contractual relations requires (1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of the contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) damages. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.) The seventh cause of action does not sufficiently plead the essential elements for intentional interference of contractual relations. Therefore, the demurrer is sustained as to the seventh cause of action.

The eighth cause of action for violations under Penal Code §502 is pled in a conclusory nature that merely recites portions of the statute. This is insufficient to assert any alleged violations under Section 502. Thus, the demurrer is sustained.

The request as to the prayer is overruled since a demurrer cannot challenge the prayer in a complaint. (*Caldera Pharmaceuticals, Inc. v. Regents of University of California* (2012) 205 Cal.App.4th 338, 368.)

In summary, the demurrer is sustained with leave to amend as to the second, fifth, sixth, seventh, and eighth cause of action. The demurrer is overruled as to the challenge to paragraph 5 of the prayer.

The amended complaint shall be filed and served on or before December 6, 2013.

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